

1982 WL 189271 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 28, 1982

*1 The Honorable Charlie G. Williams
State Superintendent of Education
S. C. State Department of Education
Rutledge Building
Columbia, South Carolina 29201

Dear Dr. Williams:

You have requested the opinion of this office as to matters concerning Act 187, Acts and Joint Resolutions of South Carolina, 1979 ([§ 59-26-10, et seq. of the Code of Laws of South Carolina](#), 1976, as amended). You wish to know whether the evaluation plan proposed by the Education Improvement Task Force is consistent with Act 187 as to the number of observations or evaluations. You also have requested this office's general comments concerning the validity of the plan. Finally, you have asked whether the same evaluations may be used for both student teachers and provisional contract teachers.

The proposed evaluation plan provides that each provisional contract teacher and each trade and industrial annual contract teacher will be observed within a two-week period on three separate occasions by a different observer on each occasion. Following these observations, the teacher will be given a written evaluation report. This process will be repeated only if the teacher needs remediation.

Act 187 clearly requires that provisional contract teachers be evaluated during three well-spaced periods of time. Section 59-26-30(3) and 59-26-40 require that provisional contract teachers be evaluated at least three times. The evaluation instrument to be used for these teachers must be in such a form ' . . . that the evaluation results can be used to inform a teacher of his strengths and weaknesses.' § 59-26-30(b)(3). See also § 59-26-40. Districts then must ' . . . give provisional teachers appropriate advice and assistance to help remedy any deficiencies that are detected by the . . . evaluations.' § 59-26-40. See also [§ 59-26-10\(d\)](#) and [§ 59-26-30\(g\)](#). Because a school district may not re-hire a teacher who the evaluation instruments show is deficient in teaching ability (§ 59-26-40), the advice and assistance would not aid a teacher's being rehired if the three evaluations were all done in the same period of time. Of course, a district could elect to give a fourth evaluation later, but it is not required to do so. Thus, the law must have intended that the required evaluations be spaced so that a teacher would be given the opportunity to reflect in subsequent evaluations any improvement in teaching ability.

The Task Force plan does not comply with Act 187's requirements as to the timing of the evaluations. Regardless of whether the three observations are counted as one or three 'evaluations', they would be executed too closely in time to satisfy the above-described requirements of three evaluations spaced far enough apart to allow for feedback and assistance. Even if the second set of observations or evaluations were given, the teacher would still have one less try than under Act 187. In addition, Act 187 does not make the giving of the evaluations contingent upon teaching performance as does the Task Force plan.

*2 Except for providing for only one or two sets of evaluations, the plan for three observations per 'evaluation' appears to be a valid method of executing Act 187's requirements however, the terms 'observations' and 'evaluations' are used interchangeably in the plan and the differences in the terms are not clearly explained. Any plan implemented should describe whether the results of the observations will be summarized in one 'evaluation' and, if so, how that process will be executed. In addition, the plan does not appear to explain which of the three observers, if any, would be the 'evaluator' (see next-to-the-last paragraph on p. 2 of the plan). The plan also apparently does not state whether the observers for subsequent sets of observations would be the

same as for the first set. Finally, special care must be given to insure that teachers who conduct their classes solely in a foreign language are evaluated on the basis of criteria that are ascertainable to the observers.

You have also requested that we advise you as to whether the same evaluation instruments may be used for both student teachers and provisional contract teachers. No problem appears to be presented by such usage provided that professional study concludes that the instruments are suitable for both kinds of teachers. The instrument must meet statutory requirements for both teachers, but those requirements are similar; however, note that the student teacher instrument must provide feedback and assistance § 59-21-30(7). Finally, most of the plan for the usage of the instrument appears to be directed toward provisional teachers. The procedure for evaluating student teachers should be carefully described as well.

If you have further questions concerning the evaluation instrument, please let me know.

Very truly yours,

J. Emory Smith, Jr.
Assistant Attorney General

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